APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DATED AND DECIDED FEBRUARY 22, 1999

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 98-2075

RUTH ANN EDWARDS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
J. Calvitt Clarke, Jr., Senior District Judge.
(CA-98-246-2)

Submitted: February 2, 1999

Decided: February 22, 1999

Before WILKINS, WILLIAMS, and MICHAEL,
Circuit Judges.

* * *

Appendix A

OPINION

PER CURIAM:

Ruth Ann Edwards filed suit under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680 (1994), alleging medical malpractice committed by medical personnel at the United States Naval Hospital in Portsmouth, Virginia. The district court granted summary judgment to the United States on the ground that the action was barred by FTCA's two-year limitations period. In a subsequent order, the court denied Edwards' motion for reconsideration. Edwards appeals both orders. Because we agree that Edwards' complaint was not timely filed, we affirm the district court's orders.

On February 6, 1990, Edwards, a civilian dependent of enlisted naval personnel, fractured both wrists while working at the United States Naval Base on Guantanamo Bay, Cuba. She received immediate treatment at the clinic in Guantanamo Bay, but continued to experience pain, swelling, and redness. As a result, she was referred to Portsmouth Naval Hospital (PNH) and underwent surgery there on August 29, 1990. At this time, doctors inserted radial styloid pins into her right wrist and placed her arm in a cast. Edwards, however, began to experience several post-surgical problems with her right arm and wrist. Complaining of swelling in her right hand and tightness of the cast, on September 16, 1990, Edwards sought treatment at a civilian hospital in New Jersey. On October 12, 1990, she returned to PNH to have a pin reinserted to its proper position after it rotated in her right wrist. At the end of the

same month, she returned for treatment at PNH after one of the pins became loose and caused an infection. While removing her cast, a PNH employee "ripped out" one of the pins in Edwards' wrist.

Because of the recent complications and recurring pain, Edwards was admitted again to PNH for treatment. Edwards checked out of the hospital on November 1, 1990. During her deposition, she stated that she told the nurse that she was "[b]asically, not getting the treatment that [she] should be getting." She further testified that she stopped going to PNH when "they tore out the pin improperly and caused infection." On November 2, 1990, Edwards consulted with Dr. J. Leddy, a civilian physician in New Jersey, who ultimately performed surgery to remove the remaining pins in her right wrist. During November, however, she was still unable to move her right wrist.

On January 31, 1991, Edwards consulted with another civilian physician, Dr. Scott Jaegar, for persistent discomfort in her right wrist. After examination, Dr. Jaegar informed Edwards that her wrist problems were due to the surgery and pins inserted at PNH. In his opinion, PNH personnel negligently inserted one of the pins into her tendons which caused the tendon to fray and ultimately resulted in the loss of movement of the wrist. On January 29, 1993, Edwards filed a Notice of Claim with the Department of the Navy alleging improper treatment from PNH personnel. The Navy denied the claim, and this FTCA suit ensued.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is

entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). On summary judgment, inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *See Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). Summary judgments are reviewed de novo on appeal. *See Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1166-67 (4th Cir. 1998).

The FTCA provides for a limited waiver of the sovereign immunity of the United States. *See Honda v. Clark*, 386 U.S. 484, 501 (1967). A condition of that waiver, however, is compliance with the FTCA's statute of limitations. *See Muth v. United States*, 1 F.3d 246, 249 (4th Cir. 1993). Under 28 U.S.C. § 2401(b) (1994), a tort claim against the United States is barred unless presented in writing to the appropriate federal agency within two years after the claim accrues or unless the action is begun within six months after final agency action. The two-year limitations period is jurisdictional and may not be waived. *See Ahmed v. United States*, 30 F.3d 514, 516 (4th Cir. 1994). The claim accrues within the meaning of § 2401(b) when the plaintiff knows or, in the exercise of due diligence, should have known of both the existence and cause of her injury. *See United States v. Kubrick*, 444 U.S. 111, 120 (1979); *Kerstetter v. United States*, 57 F.3d 362, 364 (4th Cir. 1995); *Gould v. United States Dep't of Health & Human Servs.*, 905 F.2d 738, 742 (4th Cir. 1990). Plaintiff need only know "the critical facts that be has been hurt and who has inflicted the injury;" it is not necessary that the plaintiff know the "precise medical reason for the injury" for the

cause of action to accrue. *Kubrick*, 444 U.S. at 122; *Kerstetter*, 57 F.3d at 364.

We agree with the district court that Edwards knew about her injury and the "critical facts" as to its cause at the latest by November 1990. She underwent surgery at PNH and developed post-surgical complications which did not lessen after repeated medical consultations. When she again received what she herself found to be improper and inadequate treatment at PNH, she checked out. Even though the pins were removed in November 1990, she was still unable to move her right wrist. In light of these facts, we find that Edwards was aware of her injury and that it was caused by the treatment she received at PNH by November 1990.

Edwards argues that she did not know that the injury to her right wrist was caused by negligent insertion of one of the pins by PNH medical personnel until she consulted with Dr. Jaegar in January 1991. We rejected a similar argument in *Kerstetter*, holding that it is not necessary that the injured party know exactly what went wrong during a medical operation, so long as the individual knows the "critical fact" of "who has inflicted the injury." *Kerstetter*, 57 F.3d at 365. For the reasons stated above, we conclude that Edwards had knowledge of the injury and the "critical facts" as to who inflicted that injury by November 1990, thereby triggering the two-year statute of limitations. *See Kubrick*, 444 U.S. at 122. Because Edwards filed her FTCA claim well after the expiration of the two-year period, the district court appropriately granted summary judgment to Defendant, and denied Edwards' motion for reconsideration.

Appendix A

Accordingly, we affirm the district court's orders. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION DATED AND FILED JULY 6, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Action No. 2:98cv246

RUTH ANN EDWARDS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff, Ruth Ann Edwards', motion for reconsideration of entry of summary judgment against her. The motion is DENIED.

I.

Edwards filed suit against the United States of America pursuant to the Federal Tort Claims Act (FTCA) alleging medical malpractice by employees at the United States

Naval Hospital in Portsmouth, Virginia. The United States moved for summary judgment based upon the running of the FTCA's two-year statute of limitations before Edwards filed her administrative claim with the Department of the Navy. *See* 28 U.S.C.A. § 2401(b) (West 1994). By Opinion and Order entered May 21, 1998, the Court granted the United States' motion for summary judgment.

In the Opinion and Order the Court held that Edwards' medical malpractice claim accrued in November 1990. The Court found as a fact that by November 1990, Edwards was aware, or should have been aware, both of the existence of her wrist injury and of its cause.[1] This factual finding was based upon Edwards' own deposition testimony describing the deficient and negligent treatment she received on her wrist at Portsmouth Naval Hospital before November 1990.

The Court then discredited Edwards' argument that she was not aware of the specific tendon injury until a January 31, 1991 consultation with Dr. Scott Jaeger, and thus, that her claim did not accrue until that time. Citing *Kerstetter v. United States*, 57 F.3d 362 (4th Cir. 1995), the Court held that knowledge of the precise medical reason for her injury (a pierced tendon) is irrelevant since Edwards knew much earlier that personnel at Portsmouth Naval Hospital performed their duties negligently and inflicted an injury to her wrist.

---

1. Accrual "occurs when the plaintiff became aware — or would have become aware through the exercise of due diligence — both of the existence of injury and of its cause." *Kerstetter v. United States*, 57 F.3d 362, 364 (4th Cir. 1995).

Accordingly, the Court held that Edwards' claim accrued in November 1990. She filed her administrative claim on January 31, 1993. This filing was not within the two-year statute of limitations period provided for in the FTCA. *See* 28 U.S.C.A. § 2401(b). In conclusion, the Court held that the United States did not waive its sovereign immunity with regard to Edwards' claim, and the claim should be dismissed.

Edwards has now filed a motion for reconsideration, contending that "the Court has misinterpreted the facts." The Court misinterpreted the facts, Edwards argues, by equating knowledge of her general wrist injury with knowledge of the specific tendon injury. From Edwards' point of view, the injury that matters for accrual purposes is a piercing of a single tendon in her wrist. This precise injury, she argues, was not discovered until Dr. Jaeger's clinical diagnosis on January 31, 1991.

In support of her motion for reconsideration, Edwards submits an unsworn letter from Dr. Scott Jaeger dated May 29, 1998. In the letter, Dr. Jaeger recites the chronology of events in this case and concludes that Edwards did not know about her tendon injury until he diagnosed it on January 31, 1991.

II.

As an initial matter, the Court will not consider the information and conclusions stated in Dr. Jaeger's letter of May 29, 1998. This letter was clearly prepared after the May 21, 1998 Opinion and Order setting out the Court's

factual findings in this matter. It does not contain any new information or evidence that was unavailable before that time. *See Boryan v. United States*, 884 F.2d 764, 771 (4th Cir. 1989) (stating that to succeed on a motion for reconsideration, the movant is "obliged" to show "newly discovered" evidence). What it does contain is a doctor's factual conclusions that are contrary to the conclusions arrived at by this Court. If Edwards had produced this letter in conjunction with her original brief in opposition to the motion for summary judgment, the Court would have considered it. The Court will not consider it on a motion for reconsideration.

"When considering a motion for reconsideration, the court should not reevaluate the basis upon which it made a prior ruling, if the moving party merely seeks to reargue a previous claim." *United States v. Smithfield Foods, Inc.*, 969 F. Supp. 975, 977 (E.D. Va. 1997). A motion to reconsider is only

> appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reason but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court.

Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983); *see Religious Technology Center v. Lerma*, 908 F. Supp. 1353, 1533 (E.D. Va. 1995)

(stating that "this Court seldom revisits motions upon which it has already ruled"). None of these factors are present in this case.

Edwards argues that the Court misinterpreted the facts and misunderstood her arguments. To the contrary, however, the Court thoroughly reviewed the evidence in the record on summary judgment (including the evidence concerning her tendon injury) and made specific factual findings based upon that evidence. The Court also completely understood Edwards' contention that the tendon injury is the "injury" for accrual purposes. This argument was specifically addressed and rejected in the May 21, 1998 Opinion and Order.

In conclusion, Edwards' motion for reconsideration serves no other function than the "reiteration" of Edwards' previous arguments against summary judgment. *Above the Belt, Inc.*, 99 F.R.D. at 101. Since it raises no new facts and does not demonstrate that the Court patently misunderstood the legal arguments, the motion for reconsideration is DENIED.

The Clerk is DIRECTED to mail a copy of the Memorandum Opinion and Order to counsel for Edwards and counsel for the United States of America.

Appendix B

IT IS SO ORDERED.

s/ [illegible]
United States District Judge

Norfolk, Virginia
July 6, 1998

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DATED MAY 21, 1998 AND FILED MAY 22, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

Action No. 2:98cv246

RUTH ANN EDWARDS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

OPINION AND ORDER

Plaintiff, Ruth Ann Edwards, brings this action against the United States of America pursuant to the Federal Tort Claims Act (FTCA) alleging medical malpractice by employees at the United States Naval Hospital in Portsmouth, Virginia. The United States moves for summary judgment based upon the running of the FTCA's two-year statute of limitations before Edwards filed her administrative claim with the Department of the Navy. The parties filed briefs and conducted oral argument on the

United States' motion. Because it is clear from the record that Edwards was aware of her injury and its cause more than two years before she filed her administrative claim, this action is barred by the limitations period in the FTCA.

I.

The following facts are recited in the light most favorable to Edwards. *See Detrick v. Panalpina, Inc.*, 108 F.3d 529, 536 (4th Cir.), *cert. denied*, 118 S. Ct. 52 (1997); *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985) (stating that on summary judgment, "[t]he facts themselves, and the inferences to be drawn from the underlying facts, must be viewed in the light most favorable to plaintiff").

Edwards, a civilian dependent of enlisted naval personnel, suffered fractures of both her wrists while working at the United States Naval Base in Guantanamo, Cuba. After conservative treatments failed to mend her right wrist, Edwards was referred to the United States Naval Hospital in Portsmouth, Virginia. She underwent surgery on her right wrist at Portsmouth Naval Hospital on August 29, 1990. During the surgery, physicians at the hospital inserted pins in her right wrist. Then, they placed Edwards' arm in a cast that was to remain in place for twelve weeks. In the months following the surgery, however, Edwards experienced significant problems with her right arm and wrist.

First, on September 16, 1990, Edwards checked herself into a civilian hospital in New Jersey complaining of

swelling in her right hand and tightness of the cast on her arm. Medical personnel at the civilian hospital split open the cast and reset it to alleviate Edwards' complaints.

Next, on October 12, 1990, Edwards experienced rotation of one of the pins in her right wrist. She returned to Portsmouth Naval Hospital and underwent a procedure to reinsert the pin into its proper position in her wrist.

Finally, near the end of October 1990, one of the pins became loose and caused an infection in Edwards' wrist. Edwards again sought treatment at Portsmouth Naval Hospital for this complaint. While removing the cast, an employee at the hospital ripped out one of the pins in Edwards' wrist. This was done in the cast room without anesthesia. Following this mishap, Edwards was admitted to the hospital for further treatment of her wrist and the ensuing infection. She soon lost faith in the personnel at Portsmouth Naval Hospital and checked herself out on November 1, 1990. In her deposition, Edwards describes why she decided to leave the Naval Hospital.

Q. Okay. Well, let me ask you this. There came a time when you stopped going to the Naval Hospital at Portsmouth, correct?

A. Yes.

Q. Do your recall when that was?

A. Yes.

Q. When?

A. When they tore out the pin improperly and caused infection and they were afraid that it went to my blood stream. And they med-evac'd my mother off of Cuba to fly down there because they weren't sure whether I was going to live or die.

Deposition of Ruth Ann Edwards at 48 (Mar. 6, 1997). When asked in her deposition what she told the nurse concerning her reason for leaving the hospital Edwards responded that she told the nurse that she was "[b]asically, not getting the treatment that [she] should be getting." *Id.* at 51. Edwards testified further that she was physically upset about her treatment at the Naval Hospital.

Q. Okay. And then you said — why were you upset and crying?

* * *

A. Why? Probably because they had put pins in my hand, one of them rotated back into my wrist. They rotated it back out, I had to go back, and they, instead of just putting me into surgery of some sort to remove it, they just yanked it out. And it's not a pin, it's a screw. And I keep saying pin and it's a screw.

Id. at 54.

Appendix C

On November 2, 1990, one day after leaving Portsmouth Naval Hospital, Edwards went to a civilian hospital in New Jersey. A civilian doctor, Dr. J. Leddy, performed surgery to remove the remaining pins in Edwards right wrist. Dr. Leddy then prescribed physical therapy as treatment for her wrist.

During the month of November 1990, following her initial treatment by Dr. Leddy, Edwards was unable to move her right wrist.

> Q. While you were being treated by Dr. Leddy, was there — were you having any problems with your wrist, your right wrist?
>
> A. I couldn't move my right wrist.
>
> * * *
>
> A. It hung all the way down and I couldn't move it.

Id. at 58.

On January 31, 1991, Edwards sought treatment with another civilian doctor, Dr. Scott Jaeger, for continued discomfort in her right wrist. Dr. Jaeger examined Edwards and told her that her wrist problems stem from the surgery and pins inserted at Portsmouth Naval Hospital. Specifically, Dr. Jaeger has opined that personnel at Portsmouth Naval Hospital negligently inserted one of the pins into a tendon in Edwards wrist which caused fraying

of the tendon and resulted in the loss of movement of the wrist.

On January 29, 1993, Edwards filed a Notice of Claim with the Department of the Navy alleging that she was improperly diagnosed and treated at Portsmouth Naval Hospital. When the Navy denied the claim, Edwards filed this lawsuit under the FTCA.

II.

Pursuant to Fed. R. Civ. P. 56(c), a district court must enter summary judgment against a party who, "after adequate time for discovery . . . fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law," entry of summary judgment is mandated. Fed. R. Civ. P. 56(c); *see Stone v. Liberty Mut. Ins. Co.*, 105 F.3d 188, 190 (4th Cir. 1997).

A.

It is indisputable that "immunity from suit is an attribute of sovereignty. . . ." *Lynch v. United States*, 292 U.S. 571, 582 (1934). In the FTCA, Congress prescribes "a limited waiver of sovereign immunity" for certain tort suits against the United States. *United States v. Orleans*, 425 U.S. 807, 813 (1976); *see* 28 U.S.C.A. § 2671 *et seq.* (West 1994). Since the FTCA waives the immunity of the United States,

it should not be interpreted "to extend the waiver beyond that which Congress intended." *Smith v. United States*, 507 U.S. 197, 203 (1993); *see United States v. Kubrick*, 444 U.S. 111, 118 (1979); *Soriano v. United States*, 352 U.S. 270, 276 (1957). "Neither, however, should [the Court] assume the authority to narrow the waiver that Congress intended." *Kubrick*, 444 U.S. at 118; *see Smith*, 507 U.S. at 203; *Indian Towing Co. v. United States*, 350 U.S. 61, 68-69 (1955).

One limit to the scope of the FTCA's waiver of sovereign immunity is that a civil action may not be brought against the United States unless the claimant first files an administrative claim with "the appropriate Federal agency" and the claim is denied by that agency. 28 U.S.C.A. § 2675 (West 1994). Another limit is that the administrative claim must be submitted to the agency within two years after the claim accrues. Congress explicitly stated: "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues. . . ." 28 U.S.C.A. § 2401(b) (West 1994).

Accrual of a claim under the FTCA is governed by federal law. *Gould v. United States Dept. of Health & Human Servs.*, 905 F.2d 738, 742 (4th Cir. 1990) (*en banc*), *cert. denied*, 498 U.S. 1025 (1991). In the context of a medical malpractice claim, accrual "occurs when the plaintiff became aware — or would have become aware through the exercise of due diligence — both of the existence of injury and of its cause." *Kerstetter v. United States*, 57 F.3d 362, 364 (4th Cir. 1995) (citing *Kubrick*, 444 U.S. at 120). Once a plaintiff knows "the critical facts

that he has been hurt and who has inflicted the injury . . . [t]here are others who can tell him if he has been wronged" and has a viable negligence claim. *Kubrick*, 444 U.S. at 122. Furthermore, a plaintiff need not know the "*precise medical reason* for the injury" for her cause of action to accrue. *Kerstetter*, 57 F.3d at 364. As long as the plaintiff knows in general terms that she has been injured as a result of some medical procedure, she need not know of the precise medical diagnosis or reason for her injury. *See id.*

B.

The two-year statute of limitations expired before Edwards filed her administrative claim with the Department of the Navy. Edwards knew about her injury and its cause at least by November 1990. She did not file her administrative claim until January 29, 1993. Since she did not comply with the two-year limitations period, this action must be dismissed.

In November 1990, Edwards was aware that she had been through an August surgery at Portsmouth Naval Hospital during which pins were inserted to repair her right wrist. She was also aware that she had returned to Portsmouth Naval Hospital on two occasions and to a civilian hospital on at least one occasion complaining about complications related to her surgery. Finally, during the second return visit to the Naval Hospital, employees ripped out one of the pins while trying to take Edwards' cast off to treat an infection. After this mishap, Edwards knew that she was not getting adequate treatment and checked herself out of the Naval Hospital. She then sought treatment at a

civilian hospital where the pins were removed in early November 1990. Yet, after all the pins were removed, Edwards could not move her wrist. Based on these facts, the Court finds that at least as early as November 1990, Edwards knew she had sustained an injury and knew that the injury was caused by the treatment she received at Portsmouth Naval Hospital.

Edwards argues that she did not know the cause of her injury until January 29, 1991, when she was examined by Dr. Jaeger. She claims that on that date, Dr. Jaeger informed her for the first time that she had a tendon injury in her right wrist that was negligently caused by the insertion of one of the pins at Portsmouth Naval Hospital. This argument is indistinguishable from the one rejected by the Fourth Circuit in *Kerstetter*.

In *Kerstetter*, the plaintiffs' daughter suffered permanent kidney failure as a result of an operation to remove an abdominal mass. *Kerstetter*, 57 F.3d at 363. Plaintiffs argued that their claim did not accrue until they learned that their daughter's kidney failure was caused by damage to blood vessels serving the kidney sustained while in surgery. *Id.* at 364. The Fourth Circuit rejected this argument as too specific. It held that when the plaintiffs learned that the kidney failed while in surgery, their claim accrued. *Id.* at 365. Accrual did not wait until the plaintiffs learned about the precise medical reason for the kidney failure. *Id.* The Fourth Circuit explained its reasoning this way:

Appendix C

> [I]t should not make a difference when the plaintiff learns just what went wrong during a medical operation. So long as the plaintiff knows "the critical fact" of "who has inflicted the injury," he can act to protect his rights by inquiring whether the injury was inflicted negligently. If he comes to suspect that it was, then he can file suit before he discovers the precise medical cause of the operation's failure.

Id. (quoting *Kubrick*, 444 U.S. at 122).

Here, Edwards was aware that Portsmouth Naval Hospital employees operated on her wrist and inserted pins in August 1990. She was also aware that in early October 1990, a pin improperly rotated out and had to be reinserted at the Naval Hospital. Furthermore, she was aware in October that one of the pins was inadvertently ripped out of her wrist by an employee of Portsmouth Naval Hospital while her cast was being prematurely removed to treat an infection caused by a loose pin. Finally, she knew that she could not move her wrist following the removal of all the pins. Whether she knew about the tendon injury being the precise medical reason for her inability to move her wrist is irrelevant. The fact remains that she could not move her wrist, and she knew, or should have known, that this inability was related to the surgery and pins inserted at Portsmouth Naval Hospital.

Appendix C

III.

Edwards' claim against the United States accrued at least by November 1990, and her January 29, 1993 administrative claim was not filed within two years of accrual. Consequently, Edwards' tort claim is barred by 28 U.S.C. § 2402(b). The United States' motion for summary judgment is GRANTED and this action is DISMISSED.

The Clerk is DIRECTED to mail a copy of this Opinion and Order to counsel for Edwards and counsel for the United States.

IT IS SO ORDERED.

s/ [illegible]
United States District Judge

Norfolk, Virginia
May 21, 1998

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DATED MAY 21, 1998 AND FILED MAY 22, 1998

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ACTION NO. 2:98cv246

RUTH ANN EDWARDS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

* * *

[x] **Decision by the Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendant's motion for summary judgment is GRANTED and this action is DISMISSED.

Appendix D

DATED: May 21, 1998

NORMAN H. MEYER, JR., Clerk

by s/ [illegible]
Deputy Clerk